

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

STEPHEN MICHAEL PAGE,

Plaintiff,

v.

**CRIMINAL ACTION NO. 3:07-cv-126
(BAILEY)**

UNITED STATES OF AMERICA,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. By Standing Order this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on April 25, 2008 [Doc. 27]. In that filing, the magistrate judge recommended that this Court grant the Government's motion to dismiss and to dismiss the Complaint [Doc. 1] with prejudice for lack of jurisdiction. Additionally, the report recommends that this Court overrule and deny the plaintiff's objection to the defendant's secondary response [Doc. 24].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140,


150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull's R & R were due within ten (10) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket indicates that the petitioner accepted service of the R & R on April 28, 2008. See Doc. 28. No objections have been filed. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's **Opinion/Report and Recommendation [Doc. 27]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, this Court hereby **GRANTS** the defendant's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment **[Doc. 16]**. Therefore, this Court **DENIES with prejudice and DISMISSES** the plaintiff's Complaint **[Doc. 1]** for lack of jurisdiction. Moreover, it is the opinion of this Court that the plaintiff's Objection and Motion to Vacate Defendant's Successive Secondary Response **[Doc. 24]** should be, and is, **OVERRULED** and **DENIED**. Therefore, the matter is hereby **ORDERED STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: May 15, 2008.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE